In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.562 of 2007 (O&M)

.....

Date of decision:22.5.2007

State of Haryana

.....Petitioner

v.

Smt. Parsanni Devi and others

.....Respondents

....

Present: Mr. B.S. Rana, Additional Advocate General, Haryana for the petitioner-State.

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S.S. Saron, J.

This revision petition has been filed by the petitioner-State of Haryana against the order dated 18.11.2006 (Annexure-P.1) passed by the learned Special Judge, Gurgaon whereby the application filed by the learned Public Prosecutor for the State under Section 321 of the Code of Criminal Procedure (`Cr.P.C.' - for short) seeking to withdraw from the prosecution of the case qua the respondent No.1 has been dismissed.

Respondent No.1 along with respondents No.2 to 7 is facing trial and prosecution in case FIR No.21 dated 12.11.1997 registered at the Police Station; State Vigilance Bureau, Gurgaon for the offences under Sections 409, 420, 468, 471 and 120-B of the Indian Penal Code (`IPC' – for short) and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (`PC Act' - for short). The case of the prosecution is that Mahila Kalyan Parishad (`Mahila Parishad' – for short) was formed and one Rajpal Singh

was shown to be its President for the purpose of grant by the Haryana Social Welfare Advisory Board (`Board' – for short). A dairy unit was sanctioned for the purpose of extending grant to the Mahila Parishad. Besides, Rajpal Singh, President of the Mahila Parishad, Manjeet Singh and Baljit Singh are members of the said Mahila Parishad. Other similar societies, namely, Samaj Sewa Sangh Society (`Samaj Sangh' – for short) and Nagrik Kalyan Society (`Nagrik Society' – for short) had also been formed and floated. Sarabjeet Kaur was shown to be the President of Samaj Sangh. The said societies were formed and floated for the purpose of doing social welfare for the weaker sections of the society. The Board sanctions grant for the Societies so as to undertake various activities of social welfare concerned with education and other similar activities. However, the societies floated by Baljit Singh, Manjeet Singh and Sarabjeet Kaur had been formed on the basis of forged documents in conspiracy with the Chairperson (i.e. respondent No.1) of the Board and the other accused. The office and working place of the Mahila Parishad is shown at House No.208/7/8, Faridabad. On verification this house was found to be the ownership of one Vinod William. He was residing in the said house and was working as Junior Engineer with the Escort Factory in those days. It was also found that no activity of the Mahila Parishad was being carried out at the said address. The letters of correspondence and drafts issued on the said address were returned back and those drafts were later on given by hand. In this manner, a sum of Rs.3,76,250/- was sanctioned for the Mahila Parishad. The entire record of the Mahila Parishad was found to be forged. The whereabouts of the President of the society i.e. Rajpal Singh and other

members of the society could not be found. In a similar manner, Smt. Sarabjeet Kaur, who is shown to be the President, Samaj Sangh, Gurgaon had given its address as House No.1131, Sector 10, Gurgaon. On verification, the said society i.e. Samaj Sangh was found to be bogus. Sarabjeet Kaur is the wife of Baljit Singh Dahiya. In the record of the said society a grant of Rs.1,29,350/- was sanctioned. Similarly, Nagrik Kalyan Society, the address of which was given as House No.1157, Sector 10-A, Gurgaon, was also found to be bogus. Manjeet Singh was shown as President of the Nagrik Kalyan Society and a grant of Rs.3,49,563/- was sanctioned in favour of the said society. The said house No.1157 belongs to Baljit Singh Dahiya himself. No institution carrying out the work of Nagrik Kalyan was found to be carried out there. The whereabouts of the other members of the society could not be ascertained despite best efforts. There was no office or work place of the said society. The drafts regarding sanction of grant were given by hand to Manjeet Singh. The amount deposited in the account of Mahila Parishad, Faridabad, Central Bank is mentioned in the charge report (challan) filed by the prosecution in terms of Section 173 Cr.P.C. Respondent No.1 the Chairperson of the Board had, however, shown her inspection of the Mahila Parishad at the spot on 12.9.1993 and 25.11.1993. She had also shown inspection of the premises of the Samaj Sewa Sangh on 25.11.1993. In her inspection she found proper and smooth functioning of the societies. The case of the prosecution is that an amount of Rs.8,55,143/- as grant, which was sanctioned by the Board to the aforesaid societies, was received by Baljit Singh Dahiya, Manjeet Singh and Sarabjeet Kaur in conspiracy with respondents No.1 and

other accused/officials and members of the Board by cheating. The accused in the case were charged-sheeted by the learned Special Judge on 22.8.2001 for the offences under Sections 420, 468, 471 and 120-B IPC besides, Section 13(1)(d) of the PC Act. After 15 prosecution witnesses had been examined and 5 prosecution witnesses remained to be examined, the prosecution filed an application under Section 321 Cr.P.C. to allow it to withdraw from the prosecution of the case against respondent No.1 only. It was submitted that no useful purpose would be served by continuing with the trial against respondent No.1 in this case in the larger interest of the public as well as in the interest of justice. By that time 15 prosecution witnesses had been examined. Two of them Shankar Lal Sharma (PW-11) and Jagdish Narain (PW-6) had turned hostile. The remaining prosecution witnesses, it was observed by the leaned trial Court, had supported the case of the prosecution. Besides, 5 prosecution witnesses remained to be examined. The prosecution in its application seeking withdrawal from the prosecution pleaded that during the relevant period, the grant was sanctioned by respondent No.1 to the Welfare Societies was in her capacity as Chairperson of the Board after getting all necessary formalities completed. The grant was sanctioned by her after getting reports from the concerned officers of the State as well as District Welfare Officers which was a routine way for sanction of such type of grants by the Chairperson. It was pleaded that it could not be considered that she sanctioned the grant in collusion or in conspiracy with the other accused. It was also stated that the case is based on controversial record which weakened the possibility of the success of the case against respondent No.1. The other accused in the case

initially did not prefer to file a reply to the application filed under Section 321 Cr.P.C. and their statements in this regard were recorded. However, later an application was filed by Krishna Dahiya (respondent No.6) and Sher Singh (respondent No.5) on 16.9.2006 with the prayer that the the Public Prosecutor should withdraw the prosecution against them as well. The application filed by the prosecution only regarding respondent No.1 was opposed. It was stated that the allegations against respondent No.1 and against them were almost the same. It was stated that the allegation of inspection of the premises against respondent No.1 and by them was the same. The learned trial Court after considering the facts and circumstances of the case and the contentions raised by the learned counsel for the parties dismissed the application of the Public Prosecutor seeking withdrawal from the prosecution. The said order, as already noticed, has been assailed in this petition.

Shri B.S. Rana, Additional Advocate General, learned counsel for the petitioner-State of Haryana has forcefully and vehemently contended that the impugned order seeking permission to withdraw from the prosecution has been declined by the learned trial Court in an arbitrary manner and without due application of mind. It is submitted that the State Vigilance conducted inquiries regarding different grants that were sanctioned by the Board and it was found that some 8, 9 bogus firms had illegally got sanctioned grants during the years 1995 and 1996. Four FIRs were registered at different Police Stations of the State Vigilance Bureau at Hisar, Karnal, Gurgaon and Jind. Respondent No.1 was an accused in all the cases. In all the four cases there were similar allegations of bogus firms being floated and false reports being prepared in connivance with the local

staff/field staff which were sent to the authorities. On the basis of the said reports some grants were got released by the Board. Out of the four cases that were initiated by the Vigilance Bureau, it is submitted that the cases which were pending before the learned Special Judges at Hisar, Jind, Kaithal and Yamunanagar, the evidence had been completed and respondent No.1 was acquitted of the charges as the prosecution failed to produce any evidence to connect her with the alleged offence. These cases, it is submitted, were based on identical/similar allegations and evidence in the said cases is the same as in the present case. The copies of the order dated 12.1.2001 (Annexure-P.2) passed by the learned Special Judge, Hisar and dated 26.4.2005 (Annexure-P.3) passed by the learned Special Judge, Jind have been placed on record. It is submitted that as the prosecution case in the said cases had failed, the learned Public Prosecutor after due application of mind concluded that there was no substantial evidence with the prosecution against respondent No.1. Accordingly, an application seeking permission to withdraw the case against her was filed in the Court. An application to withdraw from the prosecution case was accepted by the learned Special Judge, Karnal vide order dated 1.2.2006 (Annexure-P.4), whereas in the present case it has been dismissed vide impugned order dated 18.12.2006. Therefore, it is submitted that in two of the cases respondent No.1 has been acquitted and in one case the prosecution has been granted permission to withdraw from the case, therefore, there is no reason not to allow the prosecution to withdraw from the present case as well. A reference has been made to the challan (Annexure-P.5) filed by the prosecution in terms of Section 173 Cr.P.C. a perusal of which, it is

submitted, shows that respondent No.1 as Chairperson of the Board had sanctioned grant after getting all necessary formalities completed. It is submitted that the sanction of grant was made in routine and there is no mens rea on the part of respondent No.1 to cheat the Board or to commit `misconduct'. Besides, the learned trial Court erred in holding that cases with similar allegations are still pending whereas all cases other than the present case have been disposed of. It is also contended that the trial Court has erred in observing that the prosecution cannot be withdrawn against the single accused whereas this is contrary to the settled proposition of law. Learned counsel for the petitioner has submitted that there is bleak possibility of conviction of respondent No.1 due to lack of evidence and, therefore, the application filed by the Public Prosecutor for withdrawing from the case is liable to be accepted. Learned counsel has placed strong reliance on the Supreme Court judgment in the case of Sheonandan Paswan v. State of Bihar and others, AIR 1983 SC 194, State of Assam v. Niranjan Ghosh, 1995 Cr.L.J. 1801 (Gauhati) and Ghanshyam v. State of M.P., 2006 (4) RCR (Cr.) 653 (SC).

I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner-State and also perused the record. The application filed by the Public Prosecutor in terms of Section 321 Cr.P.C. before the learned Special Judge with the prayer to withdraw from the prosecution against respondent No.1 has been dismissed by the impugned order. The prosecution case is that a sum of Rs.8,55,143/- was sanctioned to three societies formed by accused Baljit Singh, Sarabjeet Kaur and Manjeet Singh in conspiracy with the other accused. The entire grant that had been sanctioned has been misused and has not been spent or utilized for

the purpose for which the grant had been made. Mahila Parishad of which Rajpal Singh is shown to be the President was sanctioned a grant of Rs.3,76,250/-. Another organization which was allegedly established by Smt. Sarabjeet Kaur wife of Baljit Singh Dahiya had received a grant of Rs.1,29,350/- on the basis of forged records/documents. The Nagrik Kalyan Society with Manjit Singh as its President, who is brother of Baljit Singh Dahiya received Rs.3,49,563/- as grant. The addresses of houses from where these societies were stated to be functioning were in fact not there and no such Society was functioning at the addresses as given. Respondent No.1, Chairperson of the Board had inspected the Mahila Kalyan Parishad at Faridabad on 12.9.1993 and 25.11.1993. The Samaj Sewa Sangh, Gurgaon was also inspected on 25.11.1993. In the inspection conducted by the Chairperson (respondent No.1) the said institutions/ organizations were shown to be functioning properly. In fact these were not in existence. The Nagrik Kalyan Society was inspected by Sham Lal, Welfare Officer of the Social Welfare Advisory Board, Hisar on 14.9.1992 and he found that no such organization was in existence in the said period. Devender Nath Prashar (respondent No.7), Welfare Officer of the Board inspected the Nagrik Kalyan Samiti Gurgaon on 19.12.1992. It was observed that the society/organization was shown to be running properly. The Samaj Sewa Sangh, Gurgaon was inspected on 25.2.1995 and was shown to be working smoothly which was not in existence at the time of inspection. Sher Singh, Welfare Officer of the Board (respondent No.5) in his inspection report dated 12.8.1993 in regard to Mahila Kalyan Parishad and report dated 4.3.1994 with respect to Nagrik Kalyan Society, Gurgaon

stated that the said societies/organizations were existence and working properly whereas no such societies were in existence at the time of inspection. The Investigating Officer found that Baljit Singh, Manjeet Singh and Smt. Sarabjeet Kaur in connivance with the officers/officials of the Board by establishing false institutions/organizations after obtaining false inspection reports of the officers/officials and after receiving the grant had embezzled the same for their own use and benefit on the basis of forged record. Till the time of filing the application dated 28.10.2005 before the learned Special Court, the prosecution had examined 15 witnesses. Two of the witnesses, namely, Jagdish Narain (PW-6) and Shankar Lal Sharma (PW-11) did not support the case of the prosecution. They were declared hostile. It is submitted that no case is made out against respondent No.1 as the grants have been given by her in her capacity as Chairperson of the Board and after completing necessary formalities. What she did, it is submitted, during the period for the welfare of the society was done in good faith on the basis of reports submitted by the officials and officers of the Board. However, as has already been noticed the prosecution has already examined 15 witnesses. The case was adjourned in this Court on 23.3.2007 to enable the State counsel to get the relevant records to show the number of witnesses that have been examined. The learned counsel for the State on 3.4.2007 placed on record photo copies of statements of PW-1 to PW-17 and other documents which were taken on record. The prosecution evidence, it is stated, has been closed and the case is now fixed for recording the statement of the accused.

In Sheonandan Paswan v. State of Bihar (supra) it was held that though withdrawal from prosecution is an executive function of the Public

Prosecutor for which statutory discretion is vested in him, the discretion is neither absolute or unreviewable but it is subject to the Court's supervisory function. In fact being an executive function it would be subject to a judicial review on certain limited grounds like any executive action. The authority with whom the discretion is vested "must genuinely address itself to the matter before it, must not act under the dictates of another body, must not do what it has been forbidden to do, must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously". It was observed that the exercise of the power of the Court is judicial to the extent that the Court, in according or refusing consent, has to see (i) whether the grounds of withdrawal are valid; and (ii) whether the application is bona fide or is collusive. In the application dated 28.10.2005 the various circumstances of the case have been set out. The distribution of the grant to the three societies has been mentioned. It has also been mentioned that the said societies had received the grant even though they were shown to be non-existent in some of the reports. A mention has been made to the two prosecution witnesses Jagdish Narain (PW-6) and Shankar Lal Sharma (PW-11) who did not support the case of the prosecution. It is also certified by the Public Prosecutor that it is a good case for withdrawal from prosecution in respect of respondent No.1 from the said case in public interest as well as in the interest of justice. The said withdrawal though may be valid and even not collusive but the same nevertheless is subject to judicial review, which is provided for as in the

case of any other executive order. It is, therefore, inter alia required to be seen that the Public Prosecutor has taken all relevant facts into consideration, has excluded irrelevant facts from the consideration process and that the decision taken is neither perverse or irrational. Perverse of course means improper or contradictory but in the context it symbolizes a decision not supported by any evidence and irrational would be absurd or illogical which no person properly advised on the fact would arrive. Therefore, though the decision taken by the Public Prosecutor may not be said to be illegal, inasmuch as, he had the legislative competence to take such a decision and it may not even be perverse or irrational but nevertheless is a decision which has been taken without adverting to the fact as regards the effect of the evidence which has been recorded. As has already been noticed till the filing of the application for withdrawal from the case, 15 witnesses have been examined. At present all the evidence that the prosecution had to lead has been concluded. The fact that 15 witnesses had been examined and the trial of the case was nearing its fag end was a relevant fact to be taken into consideration in the decision making process. The supervisory jurisdiction of the Court over the executive function of the Public Prosecutor is a judicial function and is to be exercised judicially in which the stage at which the case has reached is also a circumstance that would require due consideration. The Court is required to give its consent in terms of Section 321 Cr.P.C. to the Public Prosecutor In-charge of the case to withdraw from the prosecution. Even though it is provided that the Public Prosecutor can withdraw from the case at any time before the judgment is pronounced, however, the stage at which the case is pending is

a relevant factor to be taken into account in the decision making process. A perusal of the application dated 28.10.1995 filed by the Public Prosecutor has in para 11 only mentioned that the prosecution has examined 15 witnesses till date and two of them have been declared hostile. However, this would further require the effect of consideration of the evidence that had come on record. The criminal proceedings instituted against an accused person ordinarily are to be tried under the provisions of Cr.P.C. and the Courts are normally somewhat reluctant to interfere at an interlocutory stage though no inflexible rule in this regard can be laid down. However, the fact that now the entire evidence has been concluded would somewhat be a restraint on this Court to interfere at this interlocutory stage. It would be better and more appropriate that the matter is left for consideration by the learned trial Court itself before whom the entire evidence and material is there on its record. In the circumstances, it would be appropriate and in the interest of justice that the proceedings against respondent No.1 are not terminated at an interlocutory stage and rather are allowed to be concluded as the evidence itself has been concluded. This is more so for the reason that an application seeking withdrawal from the case against the other co-accused who may be similarly situated has not been filed by the prosecution. The allowing of the application of the Public Prosecutor to withdraw the case only against respondent No.1 would make the case somewhat exceptional and is likely to be construed to be discriminatory to the other similarly placed co-accused. In the circumstances, keeping in view the fact that the trial in the case has been completed it would be just and expedient for the trial Court itself to conclude the matter and not

interfere in the case at this interlocutory stage.

For the foregoing reasons there is no merit in this petition and the same is accordingly dismissed.

May 22, 2007. **(S.S. Saron)**
Judge

hsp